

109TH CONGRESS
1ST SESSION

S. 1834

To authorize the Secretary of the Department of Housing and Urban Development to make grants to States for affordable housing for low-income persons, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 6, 2005

Mr. JEFFORDS (for himself, Mr. SARBANES, and Mr. DAYTON) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To authorize the Secretary of the Department of Housing and Urban Development to make grants to States for affordable housing for low-income persons, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Affordable Housing
5 Preservation Act of 2005”.

6 **SEC. 2. MATCHING GRANT PROGRAM FOR AFFORDABLE**
7 **HOUSING PRESERVATION.**

8 (a) FINDINGS AND PURPOSES.—

1 (1) FINDINGS.—Congress finds that—

2 (A) the availability of low-income housing
3 rental units has declined nationwide in the last
4 several years;

5 (B) as rents for low-income housing in-
6 crease and the development of new units of af-
7 fordable housing decreases, there are fewer pri-
8 vately owned, federally assisted affordable hous-
9 ing units available to low-income individuals in
10 need;

11 (C) the demand for affordable housing far
12 exceeds the supply of affordable housing, as evi-
13 denced by recent studies;

14 (D) the efforts of nonprofit organizations
15 have significantly preserved and expanded ac-
16 cess to low-income housing;

17 (E) a substantial number of existing feder-
18 ally assisted or federally insured multifamily
19 properties are at risk of being lost from the af-
20 fordable housing inventory of the Nation
21 through market rate conversion, deterioration,
22 or demolition;

23 (F) it is in the interest of the Nation to
24 encourage transfer of control of such properties
25 to competent national, regional, and local non-

1 profit entities and intermediaries, the missions
2 of which involve maintaining the affordability of
3 such properties;

4 (G) such transfers may be inhibited by a
5 shortage of such entities that are appropriately
6 capitalized; and

7 (H) the Nation would be well served by
8 providing assistance to such entities to aid in
9 accomplishing this purpose.

10 (2) PURPOSES.—The purposes of this Act
11 are—

12 (A) to continue the partnerships among
13 the Federal Government, State and local gov-
14 ernments, nonprofit organizations, and the pri-
15 vate sector in operating and assisting housing
16 that is affordable to low-income persons and
17 families;

18 (B) to promote the preservation of afford-
19 able housing units by providing matching
20 grants to States and localities that have devel-
21 oped and funded programs for the preservation
22 of privately owned housing that is affordable to
23 low-income families and persons; and

24 (C) to minimize the involuntary displace-
25 ment of tenants who are currently residing in

1 such housing, many of whom are elderly or dis-
2 abled persons and families with children.

3 (b) DEFINITIONS.—In this Act:

4 (1) CAPITAL EXPENDITURES.—The term “cap-
5 ital expenditures” includes expenditures for acqui-
6 sition and rehabilitation.

7 (2) CONSORTIUM.—The term “consortium”
8 means a group of geographically contiguous localities
9 that jointly submit an application under subsection
10 (d).

11 (3) ELIGIBLE AFFORDABLE HOUSING.—The
12 term “eligible affordable housing” means housing
13 that—

14 (A) consists of more than 4 dwelling units;

15 (B) is insured or assisted under a program
16 of the Department of Housing and Urban De-
17 velopment or the Department of Agriculture
18 under which the property is subject to limita-
19 tions on tenant rents, rent contributions, or in-
20 comes; and

21 (C) is at risk, as determined by the Sec-
22 retary, of termination of any of the limitations
23 referred to in subparagraph (B).

24 (4) ELIGIBLE ENTITIES.—The term “eligible
25 entities” means any entity that meets the require-

1 ments of subsection (e)(6) and the rules issued
2 under that subsection.

3 (5) LOCALITY.—The term “locality” means a
4 city, town, township, county, parish, village, or other
5 general purpose political subdivision of a State, or a
6 consortium thereof.

7 (6) LOW-INCOME AFFORDABILITY RESTRIC-
8 TION.—The term “low-income affordability restric-
9 tion” means, with respect to a housing project, any
10 limitation imposed by law, regulation, or regulatory
11 agreement on—

12 (A) rents for tenants of the project;

13 (B) rent contributions for tenants of the
14 project; or

15 (C) income-eligibility for occupancy in the
16 project.

17 (7) LOW-INCOME FAMILIES; VERY LOW-INCOME
18 FAMILIES.—The terms “low-income families” and
19 “very low-income families” have the same meanings
20 as in section 3(b) of the United States Housing Act
21 of 1937 (42 U.S.C. 1437a(b)).

22 (8) PROJECT-BASED ASSISTANCE.—The term
23 “project-based assistance” has the same meaning as
24 in section 16(c) of the United States Housing Act
25 of 1937 (42 U.S.C. 1437n(c)), except that the term

1 includes assistance under any successor programs to
2 the programs referred to in that section.

3 (9) QUALIFIED LIMITED LIABILITY COMPANY.—

4 The term “qualified limited liability company”
5 means a limited liability company with respect to
6 which a credit is allowed under section 42 of the In-
7 ternal Revenue Code of 1986 with respect to the
8 company’s qualified basis (as defined in section 42
9 (c)(1) of such Code), in a qualified low-income build-
10 ing (as defined in section 42(c)(2) of such Code) for
11 which grant funds received under this section shall
12 be used.

13 (10) QUALIFIED PARTNERSHIP.—The term
14 “qualified partnership” means a limited partnership
15 with respect to which a credit is allowed under sec-
16 tion 42 of the Internal Revenue Code of 1986 with
17 respect to the partnership’s qualified basis (as de-
18 fined in section 42(c)(1) of such Code) in a qualified
19 low-income building (as defined in section 42(c)(2)
20 of such Code) for which grant funds received under
21 this section shall be used.

22 (11) SECRETARY.—The term “Secretary”
23 means the Secretary of Housing and Urban Develop-
24 ment.

1 (12) STATE.—The term “State” means each of
2 the several States of the United States and the Dis-
3 trict of Columbia.

4 (c) GRANTS.—The Secretary shall, to the extent that
5 amounts are made available in advance under an appro-
6 priations Act, award grants under this section to States
7 and localities for low-income housing preservation and
8 promotion.

9 (d) APPLICATIONS.—

10 (1) IN GENERAL.—Any State or locality that
11 seeks a grant under this section shall submit an ap-
12 plication (through appropriate State and local agen-
13 cies) to the Secretary.

14 (2) CONTENTS.—Each application submitted
15 pursuant to paragraph (1) shall contain any infor-
16 mation and certifications necessary for the Secretary
17 to determine who is eligible to receive a grant under
18 this section.

19 (e) USE OF GRANTS.—

20 (1) ELIGIBLE USES.—

21 (A) IN GENERAL.—Grants awarded under
22 this section may be used by States and local-
23 ities only for the purposes of providing assist-
24 ance—

(i) for acquisition, rehabilitation, capital expenditures, and related development costs for a housing project that meets the requirements of paragraph (2), (3), (4), or (5); or

(ii) to eligible entities under paragraph (6) for—

(I) operational, working capital, and organizational expenses; and

(II) predevelopment activities to acquire eligible affordable housing for the purpose of ensuring that the housing will remain affordable, as the Secretary considers appropriate, for low-income or very low-income families.

(B) USE AGREEMENT.—A project receiving assistance under this paragraph shall be subject to an agreement (binding on any subsequent owner of such project) that ensures that the project will continue to operate, for a period of not less than 50 years after the date on which any assistance is made available under this paragraph, in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms re-

quired by any program under which the project,
if offered, was eligible for assistance, subject to
available appropriations.

(C) SERVICE OF UNDER-SERVED AND
RURAL AREAS.—States receiving funds under
this section shall ensure that, to the maximum
extent practicable, that projects in under-served
and rural areas in that State receive assistance.

(2) PROJECTS WITH HUD-INSURED MORT-
GAGES.—A project meets the requirements of this
paragraph if the project is financed by a loan or
mortgage—

(A) that is—

(i) insured or held by the Secretary
under section 221(d)(3) of the National
Housing Act (12 U.S.C. 1715l(d)(3)); and

(ii) receiving loan management assist-
ance under section 8 of the United States
Housing Act of 1937 (42 U.S.C. 1437f)
due to a conversion from section 101 of
the Housing and Urban Development Act
of 1965 (12 U.S.C. 1701s);

(B) that is insured or held by the Sec-
retary and bears interest at a rate determined
under the proviso of section 221(d)(5) of the

1 National Housing Act (12 U.S.C. 1715l(d)(5));
 2 or

3 (C) that is insured, assisted, or held by the
 4 Secretary or a State or State agency under sec-
 5 tion 236 of the National Housing Act (12
 6 U.S.C. 1715z-1).

7 (3) PROJECTS WITH SECTION 8 PROJECT-BASED
 8 ASSISTANCE.—A project meets the requirements of
 9 this paragraph if the project is subject to a contract
 10 for project-based assistance.

11 (4) PROJECTS PURCHASED BY RESIDENTS.—A
 12 project meets the requirements of this paragraph—

13 (A) if—

14 (i) the project is or was eligible low-
 15 income housing (as defined in section 229
 16 of the Low-Income Housing Preservation
 17 and Resident Homeownership Act of 1990
 18 (12 U.S.C. 4119)); or

19 (ii) the project is or was a project as-
 20 sisted under section 613(b) of the Cran-
 21 ston-Gonzalez National Affordable Housing
 22 Act (12 U.S.C. 4125);

23 (B) if the project has been purchased by a
 24 resident council or resident-approved nonprofit
 25 organization for the housing, or is approved by

1 the Secretary for such purchase, for conversion
 2 to homeownership housing under a resident
 3 homeownership program meeting the require-
 4 ments of section 226 of the Low-Income Hous-
 5 ing Preservation and Resident Homeownership
 6 Act of 1990 (12 U.S.C. 4116); and

7 (C) if the owner of the project has entered
 8 into binding commitments (applicable to any
 9 subsequent owner) to extend—

10 (i) project-based assistance for not
 11 less than 15 years (beginning on the date
 12 on which assistance is made available for
 13 the project by the State or locality under
 14 this section); and

15 (ii) any low-income affordability re-
 16 strictions applicable to the project in con-
 17 nection with that assistance.

18 (5) RURAL RENTAL ASSISTANCE PROJECTS.—A
 19 project meets the requirements of this paragraph—

20 (A) if—

21 (i) the project is a rural rental hous-
 22 ing project financed under section 515 of
 23 the Housing Act of 1949 (42 U.S.C.
 24 1485); or

1 (ii) the project is a farm labor housing
2 development financed under section 514 of
3 the United States Housing Act of 1949
4 (42 U.S.C. 1484); and

5 (B) if the restriction on the use of the
6 project (as required under section 502 of the
7 Housing Act of 1949 (42 U.S.C. 1472)) will ex-
8 pire not later than 12 months after the date on
9 which assistance is made available for the
10 project by the State or locality under this sub-
11 section.

12 (6) ELIGIBLE ENTITIES.—

13 (A) IN GENERAL.—The Secretary shall es-
14 tablish, by regulation, standards for eligible en-
15 tities under this subsection.

16 (B) REQUIREMENTS.—An eligible entity
17 shall—

18 (i) be a nonprofit organization (as de-
19 fined in section 104 of the Cranston-Gon-
20 zalez National Affordable Housing Act (42
21 U.S.C. 12704)), or a qualified limited li-
22 ability company or a qualified partnership
23 the managing member or general partner
24 of which, respectively, is—

25 (I) a nonprofit organization; or

1 (II) a for-profit entity that is
 2 wholly owned by an eligible non-profit
 3 organization;

4 (ii) have among its purposes, main-
 5 taining the affordability to low-income or
 6 very low-income families of multifamily
 7 properties that are at risk of loss from the
 8 inventory of housing that is affordable to
 9 low-income or very low-income families;
 10 and

11 (iii) demonstrate to the Secretary—

12 (I) the need for the types of as-
 13 sistance described under paragraph
 14 (1)(A)(ii);

15 (II) experience in providing as-
 16 sistance described under that para-
 17 graph; and

18 (III) its ability to provide the as-
 19 sistance described under that para-
 20 graph.

21 (7) FUNDING REQUIREMENTS.—

22 (A) OPERATING SUPPORT.—Each State
 23 and locality awarded a grant under this section
 24 shall transfer at least 5 percent, but not more
 25 than 10 percent, of such grant to eligible enti-

1 ties for the purposes described under paragraph
2 (1)(A)(ii)(I).

3 (B) NONPROFIT PURCHASES.—Each State
4 and locality awarded a grant under this section
5 shall transfer at least 15 percent of such grant
6 to eligible entities for the purposes described
7 under paragraph (1)(A)(ii)(II).

8 (8) RETURN OF UNUSED FUNDS.—If any
9 amount of a grant awarded to a State or locality
10 under this section has not been obligated 3 years
11 after the grant is awarded, such amount shall be re-
12 turned to the Secretary to be redistributed in ac-
13 cordance with this section the following fiscal year.

14 (9) ADMINISTRATIVE COSTS.—A State or local-
15 ity that is awarded a grant under this section may
16 use not more than 10 percent of such grant for costs
17 associated with the administration of the grant.

18 (f) AMOUNT OF STATE AND LOCAL GRANTS.—

19 (1) IN GENERAL.—Subject to paragraph (3)
20 and subsection (g), in each fiscal year, the Secretary
21 shall award to each State and locality approved for
22 a grant under this section a grant in an amount
23 based upon the proportion of the need for assistance
24 of that State or locality under this section (as deter-
25 mined by the Secretary in accordance with para-

graph (2)) to the aggregate need among all States and localities approved for assistance under this section for that fiscal year.

(2) DETERMINATION OF NEED.—In determining the proportion of the need of a State or locality under paragraph (1), the Secretary shall consider—

(A) the number of units in projects in the State or locality that are eligible for assistance under subsection (e)(1)(A)(i) that are, due to market conditions or other factors, at risk for—

(i) prepayment;

(ii) opt-out; or

(iii) otherwise at risk of being lost to the inventory of affordable housing; and

(B) the difficulty that residents of projects in the State or locality that are eligible for assistance under subsection (e)(1)(A)(i) would face in finding adequate, available, decent, comparable, and affordable housing in neighborhoods of comparable quality in the local market, if those projects were not assisted by the State or locality under subsection (e)(1)(A)(i).

(3) LIMITATIONS.—

1 (A) MANDATORY ALLOCATION.—In any
2 fiscal year, of the total amount appropriated to
3 carry out this section—

4 (i) 40 percent shall be allocated for
5 grants to States; and

6 (ii) 60 percent shall be allocated for
7 grants to localities.

8 (B) MINIMUM GRANT AMOUNT.—Notwith-
9 standing subsection (g), a State receiving a
10 grant under this section shall receive no less
11 than .4 percent of the total amount appro-
12 priated under subsection (k) in any fiscal year.

13 (g) MATCHING REQUIREMENT.—

14 (1) IN GENERAL.—Except as provided under
15 paragraph (2), a grant under this section to a State
16 or locality for any fiscal year may not exceed an
17 amount that is twice the amount that the State or
18 locality certifies, as the Secretary shall require, that
19 the State or locality will contribute for such fiscal
20 year, or has contributed since January 1, 2004,
21 from non-Federal sources for the purposes described
22 in subsection (e)(1).

23 (2) LIMITATIONS.—Paragraph (1) shall not
24 apply to any amounts to be used by a State or local-
25 ity for—

1 (A) administrative costs under subsection
2 (e)(9); and

3 (B) operating support and working capital
4 of nonprofit organizations under subsection
5 (e)(7)(A).

6 (3) TREATMENT OF PREVIOUS CONTRIBU-
7 TIONS.—Any portion of amounts contributed after
8 January 1, 2004, that are counted for the purpose
9 of meeting the requirement under paragraph (1) for
10 a fiscal year may not be counted for that purpose
11 for any subsequent fiscal year.

12 (4) TAX CREDITS AND PRIVATE ACTIVITY
13 BONDS.—Fifty percent of the annual amount of tax
14 credits allocated to the project under section 42 of
15 the Internal Revenue Code of 1986, or proceeds
16 from private activity bonds issued for qualified resi-
17 dential rental projects under section 142 of that
18 Code, shall be considered funds from non-Federal
19 sources for purposes of paragraph (1).

20 (h) TREATMENT OF SUBSIDY LAYERING REQUIRE-
21 MENTS.—Neither subsection (g) nor any other provision
22 of this section may be construed to prevent the use of tax
23 credits allocated under section 42 of the Internal Revenue
24 Code of 1986, in connection with housing assisted with
25 amounts from a grant awarded under this section, to the

1 extent that such use is in accordance with section 102(d)
2 of the Department of Housing and Urban Development
3 Reform Act of 1989 (42 U.S.C. 3545(d)) and section 911
4 of the Housing and Community Development Act of 1992
5 (42 U.S.C. 3545 note).

6 (i) REPORTS.—

7 (1) REPORTS TO SECRETARY.—Not later than
8 90 days after the last day of each fiscal year, each
9 State and locality that receives a grant under this
10 section during that fiscal year shall submit to the
11 Secretary a report on the housing projects and eligi-
12 ble entities assisted with amounts made available
13 under the grant.

14 (2) REPORTS TO CONGRESS.—Based on the re-
15 ports submitted under paragraph (1), the Secretary
16 shall annually submit to Congress a report on the
17 grants awarded under this section during the pre-
18 ceding fiscal year and the housing projects assisted
19 and eligible entities with amounts made available
20 under those grants.

21 (j) REGULATIONS.—Not later than 6 months after
22 the date of enactment of this Act, the Secretary shall issue
23 regulations to carry out this section.

24 (k) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated for grants under this

1 section, such sums as may be necessary for each of fiscal
2 years 2006 through 2010.

3 **SEC. 3. PRESERVATION PROJECTS.**

4 Section 524(e)(1) of the Multifamily Assisted Hous-
5 ing Reform and Affordability Act of 1997 (42 U.S.C.
6 1437f note) is amended by striking “amounts are specifi-
7 cally” and inserting “sufficient amounts are”.

○